

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Parlin Post Office
Parlin, Colorado

Docket No. A2012-102

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

March 27, 2012

I. INTRODUCTION

On December 22, 2011, the Commission received correspondence from postal customers Ruth E. and Laurence E. Dolezal objecting to the Postal Service's decision to close the Parlin, Colorado Post Office (Parlin Post Office).¹ Subsequently, the Commission received appeals from Sara S. Swartz, Claire St. John, and Leon K. Oltmann.² The Commission also received a notice of intervention from the Board of County Commissioners of the County of Gunnison, Colorado on January 31, 2012.³ The Postal Service's decision, which is the subject of this proceeding, was made on December 9, 2011.⁴

¹ Letter of Ruth E. Dolezal and Laurence E. Dolezal, December 22, 2011 (Dolezal Petition).

² Letter of Sara S. Swartz, December 29, 2011 (Swartz Petition); letter of Claire St. John, January 4, 2012 (St. John Petition); letter of Leon K. Oltmann, January 10, 2012 (Oltmann Petition). The Commission received two additional letters of appeal from James B. Katheiser (January 20, 2012) and Judith Ebaugh (January 20, 2012).

³ Notice of Intervention by the Board of County Commissioners of the County of Gunnison, Colorado, January 13, 2012 (Gunnison Notice).

⁴ Final Determination to Close the Parlin, CO Post Office and Continue to Provide Service by Rural Route Service, December 9, 2011 (Final Determination). Citations to the Final Determination will use the abbreviation "FD" followed by the page number, rather than to Item No. 47. All other items in the Administrative Record are referred to as "AR Item No. ____"

On January 5, 2012, the Commission issued an order instituting the current review proceedings, appointing the undersigned Public Representative, and establishing a procedural schedule.⁵

II. STATEMENT OF FACTS

The Parlin Post Office is located at 51387 U.S. Highway 50, Parlin, Colorado 81239-9605. AR Item No. 4. Parlin is an unincorporated rural community located in Gunnison County, which is in the center-west part of the state. *Id.* The Parlin Post Office provides service to 20 post office box customers, 41 highway contract route (HCR) delivery customers, and an average of 6 retail customers per day 44 hours per week. FD at 2. There are no permit mailers or postage meter customers. AR Item No. 15.

On March 16, 2011, the Postal Service notified customers of the Parlin Post Office of a "possible change in the way your postal service is provided." AR Item No. 21. Customers were invited to complete and return a questionnaire accompanying the notice by April 4, 2011. *Id.* The notice also stated that customers would be notified of a community meeting with postal representatives to discuss any concerns. *Id.* The community meeting notice was issued on April 5, 2011 and the meeting was held on April 13, 2011, with 39 customers indicating attendance. AR Item Nos. 26 and 24. Subsequently, on April 22, 2011, the Postal Service received a petition containing 41 signatures supporting retention of the Parlin Post Office. AR Item No. 27.

On June 13, 2011, a Proposal to Close the Parlin, CO Post Office and Extend Service by Highway Contract Route Service was posted at the Parlin and Gunnison post offices. AR Item Nos. 32 and 36. The Proposal informed customers that retail and delivery services would be provided by highway contract route service administered by the Gunnison Post Office. AR Item No. 36. According to the Proposal, such service

⁵ PRC Order No. 1103, Notice and Order Accepting Appeal and Establishing Procedural Schedule, January 5, 2012; see also PRC Order No. 1266, Order Granting Motion for Late Acceptance of Comments and Modifying the Procedural Schedule, March 1, 2012.

may be provided to cluster box units (CBUs). *Id.* Customers were also informed that retail services would be available from the Gunnison Post Office, located approximately 12 miles away. *Id.* On December 9, 2011, the Final Determination was posted at the Parlin Post Office and the Gunnison Post Office for the mandatory 30-day posting period. AR Item No. 47.

The Final Determination states that the decision to close was based upon (1) a decline in workload; (2) effective and regular service being provided by rural route service emanating from the Gunnison Post Office; and (3) estimated annual savings to the Postal Service of \$49,279. FD at 7. The Final Determination also indicates that there will be a one-time expense of \$2,000 associated with “movement of this facility.” *Id.* The Final Determination notes that the Postal Service has “commenced solicitation of eligible businesses in Parlin for a possible Village Post Office establishment.” *Id.* In addition, the Final Determination also responds to various concerns expressed by postal customers in the questionnaires and at the April 13, 2011, public meeting. *Id.* at 2-7.

III. POSITIONS OF THE PARTIES

A. The Petitioners and Intervener

In the Petition for Review filed December 22, 2011, Petitioner Dolezal claims that closing the Parlin Post Office would be a hardship for postal customers, especially the elderly. Closing the Parlin Post Office would make the additional travel to Gunnison during winter “treacherous.”⁶ Petitioner Oltmann asserts that the Parlin Post Office is centrally located and therefore more convenient to several communities without a post office, or service by a community post office.⁷ In a diagram Petitioner Oltmann locates

⁶ Dolezal Petition; *see also* Participant Statement of Ruth E. and Laurence E. Dolezal, January 25, 2012, at 2 (Dolezal Initial Brief); *concur* Participant Statement of Claire St. John, February 2, 2012, at 1-2 (St. John Initial Brief).

⁷ Oltmann Petition at 2; *see also* Participant Statement of Leon K. Oltmann, January 31, 2012, at 2 (Oltmann Initial Brief).

Parlin on U.S. 50 at the junction with County Road 76 between Gunnison to the west and several communities to the east, as well as smaller communities north of the junction. Oltmann Petition at 1. He therefore suggests closure of two of the more remote and rural offices rather than the Parlin Post Office.⁸ Petitioner Oltmann also suggests that the Postal Service reduce hours of operation, including closure on Saturdays, to maintain postal services for residents and businesses in this rural and remote area. Oltmann Petition at 2.

In an Initial Brief, Judith Ebaugh disputes the number of postal customers served by the Parlin Post Office.⁹ She maintains that in addition to the 20 post office boxes in the Parlin Post Office, there are 99 HCR deliveries, with 10 on U.S. 50 and County Roads 44 and 43, 22 on County Road 76, and another 67 at the cluster box unit (CBU) in Ohio City—plus additional deliveries for the Pitkin area. *Id.*

Gunnison County requests intervention to contest the decision to close the Parlin Post Office, claiming that the Administrative Record does not support the Postal Service's rationale. Gunnison Notice at 2. In its Reply Brief filed March 3, 2012, Gunnison County argues that the determination to close the Parlin Post Office is without adequate observance of statutory obligations.¹⁰ It argues that the Administrative Record does not support the Postal Service's claim of a decline in workload. *Id.* at 12-14. According to Gunnison County, a single point estimate of the daily average of incoming and dispatched mail does not "identify[y] that this average is declining." *Id.* at 13. To the contrary, Gunnison County asserts that the Administrative Record reveals revenue at the Parlin Post Office "has remained consistent (and increased slightly: \$10,953 in FY 2008, \$12,824 in FY 2009, and \$11,393 in FY 2010)." *Id.*, citation omitted. Moreover, the Administrative Record indicates that population growth of 2.38% is anticipated in the community served by the Parlin Post Office. *Id.* at 14. Gunnison

⁸ Oltmann Initial Brief at 1-2

⁹ Participant Statement of Judith Ebaugh, February 10, 2012, at 2 (Ebaugh Initial Brief).

¹⁰ Reply Brief of the Board of County Commissioners of the County of Gunnison, Colorado, March 3, 2012, at 12 (Gunnison Reply Brief).

County also argues that undue weight is given to the estimate of economic savings, which is incomplete and miscalculated. *Id.* at 16-17. Gunnison County concludes by requesting that the Final Determination be remanded for further action by the Postal Service “with instruction that closure is not warranted by the record.” *Id.* at 18.

B. The Postal Service

In PRC Order No. 1103, the Commission directed the Postal Service to “file the applicable administrative record in this appeal.”¹¹ On January 6, 2012, the Postal Service provided an electronic version of the administrative record.¹²

On January 10, 2012, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 1103.¹³ In that filing, the Postal Service argues that, as reflected throughout the Administrative Record: (1) it has met all the procedural requirements of section 404(d); and (2) it has considered all pertinent criteria, including the effect of the closing on postal services, the community, employees, and the economic savings from the discontinuance of the Parlin facility. *Id.* at 23.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination,

¹¹ PRC Order No. 1103 at 5.

¹² See United States Postal Service Notice of Filing Administrative Record, January 6, 2012 (Notice). The Notice states that the Postal Service is filing an “electronic version” of the administrative record concerning the Final Determination to Close the Parlin, CO Post Office and Extend Service by Highway Contract Route Service. *Id.*

¹³ See United States Postal Service Comments Regarding Appeal, February 22, 2012 (Comments).

findings, and conclusions that it finds to be: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service. Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal.

B. The Law Governing Postal Service Determinations

Prior to making a determination to close or consolidate a post office, 39 U.S.C. §404(d)(1) requires that the Postal Service shall provide adequate notice of its intention at least 60 days prior to the proposed date of such action to persons served by such post office to insure they have an opportunity to present their views. The Postal Service's rules require posting of the Final Determination for at least 30 days. 39 CFR 241.3(g)(1)(ii).

In addition, prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404(d)(2) to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

The Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any

action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

The Postal Service also has regulations prescribing its requirements for closing post offices. 39 CFR 241.3.

V. THE POSTAL SERVICE'S FINAL DETERMINATION

After reviewing the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by the Petitioner, and Postal Service Comments, the Public Representative believes that the Postal Service has complied with the statute and its own rules. This includes posting procedures concerning the Final Determination on December 9, 2011. Moreover, the Postal Service's Final Determination has adequately considered the effect of closing the Parlin Post Office on the community.

The Postal Service has also considered the effect of the closing on postal services provided to Parlin customers, despite factual errors in the Administrative Record. These include a “current evaluation” of 99 highway contract route deliveries,¹⁴ rather than 41 as stated in the Final Determination; no Administrative Record evidence of a declining workload; and, record evidence of anticipated population growth and some increase (or at least stable) revenues at the Parlin Post Office. Despite these errors, which in-and-of themselves do not contravene the statutory criteria, it appears that effective and regular service will be maintained if the post office is closed—although with additional inconvenience for some postal customers.

However, the Final Determination's analysis of the effect on employees of closing the Parlin Post Office is inadequate as it relates to the calculation of economic savings, which are overstated. Nevertheless, the economic savings to the Postal Service are positive. Consequently, the Final Determination should be affirmed.

¹⁴ AR Item No. 15 at 2.

Section 404(d)(2)(A)(iv) requires consideration of “the economic savings to the Postal Service resulting from such closing.” This requirement is impacted to a considerable degree by another requirement of Section 404(d): the effect on employees of the Postal Service employed at the office. 39 U.S.C. § 404(d)(2)(A)(ii).

The Final Determination reports annual savings of \$49,279 from closure of the Parlin Post Office. FD at 7. Most of these savings are attributable to “Postmaster Salary (EAS-11, No COLA)” of \$33,168 and fringe benefits equal to 33.5 percent, or \$11,111. *Id.* The Postmaster at Parlin was promoted on April 24, 2010, and has not been replaced. Since that time, an Officer-in-Charge (OIC) has operated the Parlin Post Office as a noncareer Postmaster Relief (PMR). *Id.* at 2. No other employee will be affected by the closure. *Id.* at 7.

Gunnison County argues that the Postal Service’s estimate of economic savings is miscalculated. Gunnison Reply Brief at 17. The Public Representative agrees, but for different reasons.¹⁵ More specifically, the Public Representative considers the Postal Service’s calculation of economic savings based upon the salary and benefits of an EAS-11 Postmaster to be faulty.

The Postal Service’s calculation of economic savings from closure of the Parlin Post Office is based on the salary and benefits of an EAS-11 postmaster assuming the Parlin Post Office remains open. The Postal Service states that it is “appropriate to use a career Postmaster’s salary” in lieu of the salary and benefits of the OIC in the

¹⁵ The total annual economic savings associated with closing the Parlin Post Office is confused and inconsistently reported by the Postal Service. The Final Determination (at 7) and two versions of the Proposal to Close report annual economic savings of \$49,279. See AR Item Nos. 33 and 41. However, two other versions of the Proposal to Close report annual savings of \$48,140, which includes the annual cost of replacement carrier service of \$1,139 for Parlin customers. See AR Item Nos. 32 and 36. In these versions, the annual cost of replacement service is penciled into the calculation to arrive at \$48,140 (\$49,279 - \$1,139). In its Comments, the Postal Service does not rely on the estimate of economic savings reported in either the Final Determination or any version of the Proposal to Close. Rather, the Comments calculate a third estimate of economic savings: \$46,140. This figure includes the annual cost of replacement service *and* the one-time expense of \$2,000 for the installation of CBUs. Comments at 17, fn. 46. For obvious reasons, the one-time expense should be excluded from the calculation of total annual savings. Nevertheless, the annual economic savings of closing the Parlin Post Office are still positive, as discussed below.

calculation of economic savings. Comments at 18. The Postmaster's salary represents "the proper measure of the loss of a permanent position [because that] . . . career position would ultimately have been filled if the Parlin Post Office had not been identified as a candidate for discontinuance." *Id.* Accordingly, the Postal Service "will save the salary and benefits of a career Postmasters position." *Id.*

The Postal Service's arguments lack merit. The Postal Service has relied on an OIC to operate the Parlin Post Office for nearly 2 years. As a result, the Postal Service has enjoyed economic savings that arise from installing an OIC at a reduced salary and no benefits rather than replacing the EAS-11 Postmaster. Postal Service policies and economic logic suggests that the Postal Service would continue to employ an OIC at the Parlin Post Office to generate future savings rather than installing an EAS-11 Postmaster. The Postal Service currently operates under hiring freeze that precludes the hiring of a permanent career postmaster for the Parlin Post Office.¹⁶ Moreover, in the absence of the hiring freeze, the Postal Service is under no obligation of any type to replace the current OIC with a career postmaster even if the Parlin Post Office remains open. Thus, the Postal Service's economic saving calculations based upon the salary and benefits of a future EAS-11 Postmaster, *assuming the Parlin Post Office remains open*, are unlikely and therefore not a basis for estimating savings.

The Postal Service's calculation of economic savings must begin with the elimination of costs currently being incurred at Parlin Post Office *assuming that office is closed*. It is simply wrong to calculate economic savings based upon the salary and benefits of a possible future Postmaster assuming continued operation of the Parlin Post Office when the costs to be saved are the current salary costs of the OIC arising from closure of Parlin Post Office. If the post office remains open the Postal Service will incur costs, assuming the appointment of an EAS-11 Postmaster, not cost savings. Therefore, the salary and benefits of the EAS-11 Postmaster should be replaced with the salary of the OIC in the calculation of economic savings.

¹⁶ Comments at 20; see also Ebaugh Initial Brief, attachment "Parlin PO Eyed for Closure," *Gunnison Times*, Thursday, April 21, 2011, A12.

However, the Postal Service's calculation of economic savings is faulty in another respect. The claim that the noncareer OIC "may be separated from the Postal Service" identifies one obvious alternative for the OIC. Comments at 19. On the other hand, that employee may otherwise continue employment elsewhere with the Postal Service. This is the other obvious alternative. Consequently, Postal Service simply provides no basis for determining whether the OIC will be separated from or will continue employment with the Postal Service.

Unless and until the Postal Service provides a justification for considering that there will be a reduction in employment associated with closure of the Parlin Post Office, the inflated economic savings claimed by the Postal Service should exclude any assumed employee costs. In the case of the Parlin Post Office, those employee costs represent the amount of OICs salary.

After adjusting the calculation of economic savings by removing the EAS-11 Postmaster costs, and excluding any savings associated with the OICs salary assuming continued employment, the economic savings to the Postal Service are positive. The adjusted economic savings total \$3,861 (\$5,000 Annual Lease Costs, less \$1,139 Annual Cost of Replacement Service).

VI. CONCLUSION

The Postal Service's Final Determination to close the Parlin Post Office should be affirmed.

Respectfully Submitted,

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